IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10553 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALLABHBHAI LAKHMANBHAI PATEL DECD. THRO'HEIR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR RAJESH K SAVJANI for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/07/2006

ORAL JUDGMENT

1. The petitioner has approached this Court for

challenging the order passed by the District Collector dated 7.5.2005, whereby the price fixed of the land in question as prevailing in the year 1996 is Rs.80/- per sq. mtr., and the earlier valuation is confirmed.

2. Heard Mr.Savjani, learned Counsel for the petitioner and Mr.Mengdey, learned AGP for the State Authorities.

3. The short facts leading to this petition are as under:

(a) Initially the District Collector granted permission for N.A., by fixing the price of the land at the rate of Rs.7110/- per acre and as the land was admeasuring 13 acres 0.7 gunthas, the petitioner was called upon to pay the premium at the rate of 70% of the total valuation of the land which was made at Rs.93,674/-. The petitioner has also paid the said total amount of Rs.65,572/- being 70% of the valuation made. It appears that the District Collector subsequently vide order dated 20.6.1996 cancelled earlier order since prior approval

of the State Government was not obtained. The matter was carried before the State Government in revision by the petitioner and vide order dated 30.11.1997 the revision was allowed and it was directed that the Collector should obtain necessary approval from the State Government by making proposal in accordance with law. It appears that thereafter the petitioner was called upon to show his willingness vide order dated 22.2.2000, as to whether the petitioner is willing to pay the premium as per the prevailing market price or not and at this stage the petitioner preferred Special Civil Application No.10070 of 2000 before this Court which came to be disposed of by this Court (Coram: H.K.Rathod, J.) as per the judgement dated 30.8.2001 and the decision of the District Collector calling upon the petitioner to pay market price was set aside and it was directed to the District Collector to reconsider the case of the petitioner for grant of N.A. permission on

the basis of the Government resolution dated 16.3.1982 and to consider the market price which was prevailing in the year 1996 in respect of the land in question and to fix the market price of the land in question accordingly and to grant permission in favour of the petitioner. It appears that thereafter the District Collector referred the matter to the District Valuation Committee for getting the opinion of the market price prevailing in the year 1996 i.e. the year in which the application was made by the petitioner for converting the land for non agricultural purpose and the District Valuation Committee opined for the valuation at the rate of Rs.80/- per sq. mtr., and accordingly the District Collector communicated the petitioner vide communication dated 29.1.2003, calling upon him to pay the premium of Rs.34,12,352/- being 80% of Rs.42,64,440/- and the adjustment of Rs.2,12,232/- already paid by the petitioner was given and the petitioner

was called upon to make the payment of Rs.32,00,122/-. It appears that the petitioner once again approached this Court by preferring Special Civil Application No.2193 of 2003 against the aforesaid communication of the District Collector and the said petition, as per the judgement dated 12.8.2004 of this Court (Coram: M.R.Shah, J.) was allowed only on the ground that the order dated 29.1.2003 of the District Collector was passed without giving hearing to the petitioner and the matter was remanded to the District Collector for deciding the amount of premium afresh after giving opportunity of hearing to the petitioner and for considering the material upon which the reliance may be placed by the petitioner while considering the market price by the Collector. It appears that thereafter vide communication dated 7.10.2004, the District Collector once again confirmed the valuation of Rs.80/- per sq. mtr., as prevailing in the year 1996, but

additionally communicated that the land is situated at Jamnagar Lalpur Highway and is near to the limits of Corporation and in the nearby area there is GIDC Phase-II Industrial Estate and, therefore, the valuation made by the District Valuation Committee appears to be proper and no change is called for. The petitioner once again approached this Court by preferring Special Civil Application No.14489 of 2004, which came to be decided as per the decision dated 29.1.2005 of this Court (Coram: M.R.Shah, J.), whereby it was observed that the Collector had to decide the matter on the basis of the Government Resolution dated 16.3.1982 and, therefore, the matter was once again remanded to the District Collector for passing a fresh order fixing the amount of premium considering the market price prevailing in the year 1996 on its merits. It appears that thereafter the petitioner once again made representation pointing out his case to the District

Collector and vide impugned communication dated 7.5.2005 the District Collector has recorded the reasons for concurring with the valuation of Rs.80/- per sq. mtr., and it is under these circumstances the petitioner has approached this Court by preferring this petition.

4. Mr.Savjani, learned Counsel appearing for the petitioner submitted that the reliance placed by the District Collector upon the opinion of the District Valuation Committee is at the first instance illegal, because he submitted that the District Valuation Committee was not in existence in the year 1996 and, in any case, for the purpose of fixing the valuation of the land in question the resolution on the basis of which direction was given for getting approval of the State Government did not provide for valuation to be made by the District Valuation Committee. He also submitted that it was required for the District Collector to send the proposal on the basis of valuation made earlier i.e., at the rate of Rs.7,110/- acre and it was not open to

him to undertake the revaluation of the land in question and to forward the proposal thereafter. He, therefore, submitted that the action of the District Collector taking the revaluation of the land in question is illegal and deserves to be quashed.

5. Mr.Mengdey, learned AGP submitted that it appears that the State Government has not taken any final decision of granting approval or otherwise to the proposal of the District Collector and, therefore, if the direction is given to the State Government to decide the proposal which may be made by the District Collector after taking into consideration of the material, including the representation and the material which are produced by the petitioner, the appropriate decision shall be taken by the State Government within some reasonable time, as may be ordered by this Court.

6. It appears that when this Court (Coram: H.K.Rathod, J.) examined the matter in SCA No.10070 of 2000, it was at a stage where the petitioner was called upon to submit his

willingness to pay the premium on the basis of the market price prevailing then and, therefore, it was observed by this Court in the said decision that it is the date of the application in the year 1996 which may have the relevance qua prevailing price and not the prevailing price in the year 2000 and, therefore, it was observed by the Court that the market price prevailing in the year 1996 is to be considered. It is also true that the observations were made by this Court in the said decision dated 30.8.2001 to consider the matter on the basis of the Government Resolution dated 16.3.1982, because the proposal was in the year 1996 and the Government Resolution dated 15.1.1998 was held as having prospective effect and not retrospective effect and, therefore, this Court directed for reconsideration of the matter on the basis of the price prevailing in the year 1996 and the policy prevailing of the Government in the year 1996. Therefore, to that extent it can be said that the exercise undertaken by the District Collector of revaluation of the land by

getting the opinion of the District Valuation Committee was not called for.

7. However, even if the proposal is forwarded by the District Collector as per the orders dated 29.12.1997 passed by the State Government in revisional jurisdiction, it cannot be said that the State Government will have to approve the proposal as it is forwarded by the District Collector. It will be for the State Government to examine the matter on the basis of the policy prevailing in the year 1996 and to decide as to whether the valuation as made by the District Collector of Rs.7,110/- per acre of the land in question in the year 1996 is a correct valuation or not. If the State Government finds, while undertaking the process of considering the matter for approval that the valuation is not correctly made of the land in question as prevailing in the year 1996, the State Government may not grant approval and may call upon the District Collector to undertake the valuation once again as prevailing in the year 1996 or the State Government itself may

undertake the process of determining the valuation as prevailing in the year 1996 or the State Government may refer the matter to some expert body for fixing the valuation as prevailing in the year 1996 and then may take appropriate decision by communicating to the District Collector of granting its approval at the particular valuation or may reject the proposal made by the District Collector. In my view, all such contingencies have up till now not occurred and only at the stage of preparing and forwarding the proposal by the District Collector to the State Government, the earlier litigations were there and the observations were made in the judgement for preparation of the proposal and forwarding thereof by the District Collector to the State Government.

8. Mr.Savjani, learned Counsel for the petitioner is partly right in submitting that it was required for the District Collector to forward the proposal to the State Government on the basis of the valuation made in the year 1996 at the rate of Rs.7,110/- per acre, but the said

contention cannot be accepted in toto in as much as it is observed by this Court in its earlier judgement the prevailing market price is to be considered as that of 1996. It is true that on the face of the report submitted by the Mamlatdar of sale instances, the valuation was arrived at Rs.7,110/- per acre, but thereby it cannot be said that the question of valuation of the land as prevailing in the year 1996 had concluded even at the level of State Government while considering the proposal. Even if the District Collector is of the view that on the basis of sale instances as prevailing in the year 1996 the valuation is Rs.7,110/- per acre and on the basis of various reasons as mentioned in the impugned order dated 7.5.2005 the correct valuation would be of Rs.80/- per sq. mtr., then also it was not required for him to stall the action of forwarding the proposal to the State Government for approval or otherwise at that stage by calling upon the willingness on the part of the petitioner to pay the premium of the valuation of the land of Rs.80/- per sq. mtr.

It was required for the District Collector to forward all the material to the State Government, including the valuation made on the basis of sale instances and the other material, if any, and also the representation made by the petitioner for justifying the valuation made on the basis of sale instances, for the purpose of seeking appropriate orders of the State Government on the aspects of approval or otherwise. It appears that as earlier the Collector made valuation at the rate of Rs.7,110/- per acre on the basis of sale instances and subsequently, has taken the view that the valuation prevailing in the year 1996 was Rs.80/- per sq. mtr., of the land in question and as per the petitioner the valuation would be of Rs.7,110/- per acre only on the basis of sale instances, it would be just and proper if all the papers are forwarded to the State Government for granting approval to the proposal of the District Collector on the basis of the valuation at Rs.7,110/- per acre or Rs.80/- per sq. mtr., or any amount which may be

fixed by the State Government for the valuation of the land in question as prevailing in the year 1996 for the purpose of grant of approval. It deserves to be clarified that at the time when the matter is considered by the State Government the observations made by this Court herein above in the earlier paragraphs for the scope and ambit of the power of the State Government while granting approval or otherwise shall also be considered by the State Government. It may be that at the time when the question of grant of approval at a particular price is finalized by the State Government and in the event any amount is falling short or is not deposited by the petitioner, the State Government may be required to take into consideration the loss of interest caused to the State Government towards the premium not by way of any penal measure, but as a compensatory measure, which would normally be equivalent to the banking rate of interest as prevailing from time to time on the investment made, had the amount been made available to the State

Government.

9. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

(a) The District Collector, Jamnagar shall forward the proposal to the State Government for approval on the basis of the valuation made at the rate of Rs.7,110/- per acre and simultaneously he shall also forward all the papers to the State Government, including the judgement of this Court given in the earlier litigation with the view of the District Collector that the revaluation is at Rs.80/- per sq. mtr. In the said proposal, the District Collector shall also forward all the representations made by the petitioner to the District Collector for justifying the valuation of the land at Rs.7,110/- per acre. The aforesaid exercise shall be completed within a period of one month from the date of receipt of the order of this Court.

(b) After the proposal is received by the

State Government, the State Government shall decide the proposal for grant of approval or otherwise or appropriate orders in light of the observations made by this Court herein above and shall communicate the decision to the petitioner as early as possible, preferably within a period of three months from the date of receipt of such proposal by the State Government from the District Collector. After the decision of the State Government, the consequential order may be passed by the District Collector. In the event the petitioner is aggrieved by the decision of the State Government, the petitioner may have the remedy, as may be permissible in law.

10. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

1.7.2006 **(Jayant Patel, J.)**

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